

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 EA-11 IO-13 ADP-00 AGR-20 CEA-02

CIAE-00 COME-00 DODE-00 EB-11 FRB-02 H-03 INR-10

INT-08 LAB-06 NSAE-00 NSC-10 PA-03 RSC-01 AID-20

CIEP-02 SS-15 STR-08 TAR-02 TRSE-00 USIA-12 PRS-01

OMB-01 OIC-04 AF-10 ARA-16 NEA-10 /230 R

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FM SECSTATE WASHDC

TO USMISSION GENEVA

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AMEMBASSY BONN

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SUBJ: US EXPORT RESTRICTIONS: GATT OBLIGATIONS

REF: GENEVA 3379 (NOTAL)

1. MISSION AUTHORIZED TO FURNISH GATT SECRETARIAT WITH APPROPRIATE USG REGULATIONS ON EXPORT CONTROL MEASURES.

2. RE QUESTION CONTAINED PARA 2 REFTTEL, FOLLOWING MAY BE CONVEYED TO GATT SECRETARIAT: BASIC JUSTIFICATION UNDER GATT FOR US EXPORT CONTROLS, AS EMBODIED IN CURRENT AND PROPOSED LEGISLATION, IS ARTICLE XX, SUBPARA (J). THAT EXCEPTION REQUIRES RESTRICTIONS INCONSISTENT WITH GATT TO BE REMOVED AS SOON AS CONDITIONS NECESSITATING THEM CEASE TO EXIST. WHILE THIS PROVISION COULD BE READ TO SUGGEST THAT MEASURES SHOULD BE TEMPORARY, SUCH MEASURES COULD CONCEIVABLY BE PERMANENT IF THE CONDITIONS GIVING RISE TO THEM PERSISTED. TO ENSURE CONFORMITY WITH XX (J), THE RESTRICTIVE MEASURES WOULD HAVE TO BE REMOVED WHEN THOSE CONDITIONS DISAPPEAR. US INTENDS TO FOLLOW THIS COURSE.

3. OTHER CONDITION WHICH MUST BE SATISFIED UNDER XX (J) IS THAT MEASURES MUST BE "CONSISTENT WITH THE PRINCIPLE THAT ALL CONTRACTING PARTIES ARE ENTITLED TO AN EQUITABLE SHARE OF THE INTERNATIONAL SUPPLY OF" RESTRICTED PRODUCTS. WE BELIEVE MOST REASONABLE INTERPRETATION OF THIS CONDITION IS THAT IT NOT LIMITATION ON CONTRACTING PARTY'S RIGHT TO IMPOSE EXPORT CONTROLS, BUT ONLY RESTATEMENT OF ARTICLE XIII "PRINCIPLE" THAT IF CONTROLS ARE IMPOSED, THEY MUST APPLY EQUALLY TO ALL THIRD COUNTRIES. (THIS VIEW DEPENDS ON INTERPRETING TERM "INTERNATIONAL SUPPLY" AS MEANING THAT PART OF SUPPLY OF COMMODITY WHICH IS TRADED INTERNATIONALLY FROM TIME TO TIME.) USG ACTION IS, OF COURSE, EQUALLY APPLICABLE TO ALL COUNTRIES. WITH RESPECT TO ACTIONS TAKEN THUS FAR, HOWEVER, IT SHOULD BE NOTED THAT QUANTITIES OF PRODUCTS NOW UNDER CONTROL WHICH HAVE BEEN EXPORTED THIS YEAR EXCEED, BOTH RELATIVELY AND ABSOLUTELY, QUANTITIES EXPORTED IN ANY PRIOR YEAR.

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4. ARTICLE XI, PARA 2(A) PROVIDES SOMEWHAT NARROWER EXCEPTION TO GENERAL RULE CONTAINED IN ARTICLE XI FOR RESTRICTIONS WHICH ARE "TEMPORARY" AND LIMITED TO "PRODUCTS ESSENTIAL TO THE EXPORTING CONTRACTING PARTY." WHILE THIS PROVISION, BECAUSE OF ITS LIMITED SCOPE, WOULD NOT JUSTIFY ALL EXPORT RESTRICTIONS WHICH COULD BE IMPOSED UNDER US EXPORT CONTROLS LAWS, IT WOULD APPEAR

TO PROVIDE ALTERNATIVE JUSTIFICATION FOR ACTIONS TAKEN TO DATE; THESE MEASURES ARE LIMITED TO PRESENT CROP YEAR AND AFFECT COMMODITIES EITHER ALREADY IN CRITICAL SHORT SUPPLY OR WHICH WOULD BECOME SO IN THE ABSENCE OF CONTROLS.

5. FINALLY, PRESENT CONTROL MEASURES ARE JUSTIFIED BY ARTICLE XX(I), BECAUSE OF RELATIONSHIP BETWEEN MEASURES AND THE TEMPORARY PRICE FREEZE IN US. WITHOUT EXPORT CONTROL MEASURES, EFFECT OF THE PRICE FREEZE WOULD HAVE BEEN TO DIVERT PRODUCTS FROM DOMESTIC TO EXPORT MARKETS.

6. AS FOR METHOD OF ALLOCATING EXPORTS, US FORMULA OF HONORING ACTUAL CONTRACTS ON A STRAIGHT PERCENTAGE BASIS IS IN COMPLETE CONFORMANCE WITH ARTICLE XIII PARA 2, WHICH STATES "...CONTRACTING PARTIES SHALL AIM AT A DISTRIBUTION OF TRADE IN SUCH PRODUCT APPROACHING AS

CLOSELY AS POSSIBLE THE SHARES WHICH THE VARIOUS CONTRACTING PARTIES MIGHT BE EXPECTED TO OBTAIN IN THE ABSENCE OF SUCH RESTRICTIONS". US METHOD NOT ONLY APPROACHES, BUT EXPLICITLY ACHIEVES THE DISTRIBUTION OF TRADE THAT WOULD HAVE OCCURRED IN THE PERIODS JUNE 13 - AUGUST 31 (SOYBEANS) AND JUNE 13 - SEPTEMBER 30 (MEAL AND CAKE). SINCE US IS NOT ALLOCATING ON A COUNTRY BASIS, BUT ON A CONTRACT BASIS (I.E., ON THE BASIS OF ACTUAL TRADE, CONTRACTED FOR) SUBPARAGRAPH (D) MAY NOT BE APPLICABLE; EVEN IF (D) IS APPLICABLE, HOWEVER, WE BELIEVE REQUIREMENTS HAVE BEEN MET BECAUSE LIMITED OFFICIAL USE

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(I) DISTRIBUTION IS BASED ON ORDERS RECEIVED DURING PREVIOUS PERIOD, AND (II) SINCE RESTRICTIONS ARE EXPRESSLY TEMPORARY, SPECIAL FACTORS (I.E., OUTSTANDING CONTRACTS) ARE CLEARLY APPLICABLE.

7. ON BASIS FOREGOING, IMPOSITION OF EXPORT RESTRICTIONS BY USG IS, IN OUR VIEW, CONSISTENT WITH USG'S OBLIGATIONS UNDER GATT. MOREOVER, IN IMPOSING RESTRICTIONS, USG HAS MET GATT PROCEDURAL REQUIREMENTS, IN PARTICULAR THOSE PROVIDED IN ARTICLE X, PARA 1.

8. DEPT POUCHING TWO MEMORANDA OF LAW CONCERNING CONSISTENCY OF PROPOSED AMENDMENTS TO EXPORT ADMINISTRATION ACT WITH US INTERNATIONAL OBLIGATIONS AND INTERNATIONAL PROCEDURAL OBLIGATIONS FOR IMPOSING

EXPORT CONTROLS. MEMORANDA, FROM WHICH SUBSTANCE ABOVE
PARA DRAWN, ARE FOR MISSION'S INFO ONLY AND SHOULD NOT
BE DISCUSSED WITH GATT SECRETARIAT OR REPS OF OTHER
GOVTS IN GENEVA.

9. ACTION THIS MESSAGE FOR GENEVA ONLY; HOWEVER INFO
MISSIONS MAY DRAW ON CONTENTS IN RESPONDING TO HOST
GOVERNMENT INQUIRIES ON IF ASKED BASIS ONLY. RUSH

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